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APPLICATION OF

WOLF HILLS ENERGY, LLC

CASE NO. PUE990785

**For Approval of a Certificate of Public
Convenience and Necessity Pursuant to
Va. Code § 56-265.2 and an Exemption
from Chapter 10 of Title 56**

REPORT OF MICHAEL D. THOMAS, HEARING EXAMINER

April 27, 2000

SUMMARY OF THE RECORD

On November 30, 1999, Wolf Hills Energy, LLC (“Wolf Hills”) filed an application with the Commission for approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2 B and an exemption from Chapter 10 of Title 56. By order dated January 27, 2000, the Commission docketed the application, assigned the case to a Hearing Examiner, established a hearing date and procedural schedule for the filing of prepared testimony and exhibits, and established public notice requirements.

Wolf Hills is a Limited Liability Company organized under the laws of the State of Maryland. As defined in Va. Code § 56-265.1(b), Wolf Hills will furnish electric generation service as a Virginia “public utility.” Wolf Hills is a wholly owned subsidiary of Constellation Power, Inc. (“CPI”), which is wholly owned by Constellation Enterprises, Inc. (“CEI”), whose ultimate parent is Constellation Energy Group, Inc. (“CEG”). CEG is an exempt holding company under the Public Utility Holding Company Act of 1935. CEG’s primary subsidiary is Baltimore Gas & Electric, which accounts for about 75% of CEG’s total assets of \$9.68 billion. CPI holds up to a 50% interest in 28 power plants that are under construction or in actual operation, representing more than 1100 MW of electric power and \$2.4 billion in capital investment. Twenty-two of these projects are located in the United States and the remaining six are located in Latin America. CPI has announced the development of nine gas-fired merchant plants located in California, Illinois, Massachusetts, Florida, Texas and Virginia totaling 5200 MW of electric power. The estimated project cost for the plant in Virginia is \$96 million and Wolf Hills expects to use internal funding to develop and construct the project.

Wolf Hills plans to build a nominal 250 MW natural gas fired, simple cycle power plant (the “facility”) just outside the city limits of Bristol, Virginia in the Bristol-Washington County Industrial Park in Washington County. Initial site work for the facility is expected to begin in April or May 2000, with actual construction commencing in June 2000. The facility is expected to be operational by June 2001. The facility will be constructed on a former “brownfield site” that is currently controlled by the City of Bristol for the benefit of the Bristol Virginia Utilities

Board (“BVUB”).¹ The land for the facility is zoned for industrial uses and the facility will not require any special use permits. It is envisioned that the facility will operate primarily during the summer months. The ability of the facility to meet winter peak demand will be a function of the number of hours the facility has run during the summer and the number of hours allowed under its applicable air quality permits. It is anticipated that all of the electricity produced at the facility will be sold on a wholesale basis to Constellation Power Source, Inc. (“CPS”), a power marketing affiliate of CPI. A 1,500-ft. transmission line to AEP’s Broadford-Nagle and North Bristol-Spring Creek 138 kV transmission lines will interconnect the facility with AEP’s system.² The facility will produce electricity using five Pratt & Whitney FT8 Twin Pac gas turbine generators. The Pratt & Whitney FT8 is a derivative of the Pratt & Whitney JT8D aircraft engine. Two gas turbine engines will produce the shaft horsepower necessary to drive one electric generator. The turbines are designed to burn natural gas and there is no provision to burn oil as a back-up fuel. Maintenance of the turbines is simplified because of its aeroderivative design and a spare engine will be housed at the site in the event of engine failure. Natural gas for the facility will be delivered from the East Tennessee Interstate Pipeline through a 1.5-mile connection pipe to be constructed. Wolf Hills or CPS will enter into commodity gas supply contracts with wellhead suppliers, primarily on the Gulf Coast, and separate contracts will be negotiated with gas transportation companies to deliver the gas. It is anticipated that 1-2 full-time employees will operate the facility. At times, the facility may be operated and controlled remotely.

In support of its Application, Wolf Hills provided the testimony of Ms. Gina E. Molz, vice president of Wolf Hills, and Ms. Peggy Stover-Catha, director of environmental health & safety for CPI. Ms. Molz provided much of the background information set forth above. She did testify that the financial feasibility of this project is significantly affected by achieving the commercial operation date of June 2001.

¹ BVUB filed a letter with the Commission in support of Wolf Hills’ application. BVUB states the project will bring direct benefits to the Board and the community from the line that Wolf Hills will build to connect its facility to American Electric Power’s (“AEP”) system. As part of the project, the Board will build a separate substation that will provide them access to AEP’s system and access to purchase power from AEP. BVUB further states the facility will provide tax and economic development benefits to the surrounding area, enhance the competitive market for wholesale electricity in Virginia, and provide additional electric capacity to the Bristol Virginia area. Finally, BVUB states the project will provide these benefits without imposing any detrimental impacts on general service reliability, retail electric rates, or the environment.

² AEP has no objection to the facility receiving a certificate of public convenience and necessity. At the request of Wolf Hills, AEP conducted a preliminary power flow analysis to evaluate the interconnection feasibility of the project. Preliminary indications are that the facility’s 250 MW of generation can be accommodated on the 138 kV system at the facility’s site. AEP prefers that 150 MW of generation (3 units) be connected to its Broadford-Nagle 138 kV line and the remaining 100 MW of generation (2 units) be connected to the North Bristol-Spring Creek 138 kV line, with no direct connection between the two generation buses. Under this arrangement, single and double contingency line loadings will remain within 87% of circuit emergency ratings. Wolf Hills has agreed to this interconnection plan. Transmission delivery requests will be made in accordance with AEP’s Open Access Transmission Tariff. Pending the result of AEP’s 765 kV transmission line request, which is pending before the Commission, AEP will not be able to accommodate requests for long-term firm north-to-south and west-to-east transmission service through its Southern Transmission Region.

Ms. Stover-Catha's testimony addressed the environmental impacts of the facility and how those impacts will be minimized. In addition, she provided the status of the facility's required environmental permits. Ms. Stover-Catha testified the facility's proposed site was a former sewage treatment plant that was closed under the oversight of the Virginia Department of Environmental Quality ("DEQ") that will be redeveloped. The facility will be located in an area that is in attainment with the National Ambient Air Quality Standards or unclassified for Particulate Matter, Sulfur Dioxide ("SO₂"), Carbon Monoxide ("CO"), Ozone, Nitrogen Oxides ("NO_x"), and lead. By burning only natural gas, air emissions at the facility will be greatly reduced. The air emissions from the turbines will be vented through stacks that are 45-feet, 6-inches tall and 9-feet, 6-inches in diameter. Air emissions control will include "good combustion," a CO catalytic reduction system to reduce CO and Volatile Organic Chemicals ("VOC's"), and a water injection system for NO_x control. The facility will be supplied with water from the Washington County public water system that will be demineralized by a mobile treatment facility. The facility will create minimal process wastewater and sanitary wastewater discharges. The wastewater will be discharged into the City of Bristol's sewage treatment system. The turbine engines will be enclosed to control noise. Silencers will be installed on the inlet and the exhaust of the engines. The noise emissions of the facility will be designed to be compatible with the existing background noise. The facility will require a Virginia State Major New Source Permit in order to operate because it will emit over 100 tons of a criteria pollutant.³ However, under the applicable Federal Prevention of Significant Deterioration ("PSD") permitting requirements, the facility will be a non-PSD source since it will not emit more than 250 tons per year of any of the criteria pollutants. Ms. Stover-Catha expects the facility to be subject to Title IV Acid Rain Provisions, which require the facility, if necessary, to obtain SO₂ emission allowances annually. Additionally, one year after the facility commences operation, Wolf Hills must apply for a Virginia Title V Operating permit. The facility may also have to track its need for NO_x allowances and Continuous Emission Monitors. Finally, Ms. Stover-Catha testified Wolf Hills would implement environmental management and compliance procedures and systems necessary for compliance with other applicable federal, state, and local environmental laws and regulations and monitor its compliance.

DEQ coordinated a review of the impact of the Wolf Hills project with other state agencies and localities. The results of this review were filed with the Commission on April 3, 2000. State agencies participating in the review included: DEQ; Department of Conservation and Recreation; Department of Mines, Minerals and Energy; Department of Transportation; Department of Historic Resources; Virginia Institute of Marine Science; Virginia Marine Resources Commission; and Mount Rogers Planning District Commission. The review concluded that the project is unlikely to have significant effects on water quality, wetlands, or historic structures and it will not affect species of plants listed by state agencies as rare, threatened, or endangered. The agencies participating in the review also provided Wolf Hills with recommendations to ensure the company's compliance with each agency's regulations.

³ Wolf Hills filed a "Form 7" Air Permit Application with DEQ on November 16, 1999. DEQ is expected to issue the final permit no later than June 15, 2000. As part of its application, Wolf Hills must develop a model to demonstrate the impact the facility will have on air quality. DEQ has approved the protocol for this model. The model parameters include: NO_x, CO, and formaldehyde. Wolf Hills expects the model to demonstrate that emissions of these chemicals are *de minimis* and, therefore, comply with the Federal and State Ambient Air Quality Standards.

The Staff prefiled the testimony of Lawrence T. Oliver, assistant director of the Commission's Economics and Finance Division and Howard M. Spinner, senior utilities analyst in the Commission's Energy Regulation Division. Mr. Oliver's testimony addressed whether Wolf Hills has the financial resources to construct the facility. Mr. Oliver found that Wolf Hills by virtue of its association to CEG has access to the capital necessary to construct the facility. Mr. Spinner's testimony focused on Wolf Hills' technical competence to construct the facility. Mr. Spinner found that the Wolf Hills project generally meets the criteria delineated in Va. Code § 56-265.2 and recommended that the Commission grant Wolf Hills' request for a certificate of public convenience and necessity.

Comments on the Wolf Hills project were received from Congressman Rick Boucher, State Senator William Wampler, and Delegate Joseph P. Johnson. They expressed their strong support for Wolf Hills' Application. The Commission received no other written comments on Wolf Hills' Application. There were no Notices of Protest or Protests filed in this proceeding.

The hearing commenced as scheduled on April 27, 2000. No public witnesses appeared at the hearing. Wolf Hills appeared by its counsel, Richard D. Gary, Esquire, and the Staff appeared by its counsel, C. Meade Browder, Esquire. The Office of the Attorney General, Division of Consumer Counsel filed a letter with the Commission that it did not intend to participate in the hearing.

At the hearing, Wolf Hills and the Staff tendered for the Commission's consideration a Stipulation, which is attached hereto as Attachment A. Wolf Hills and the Staff further agreed to admit into evidence without cross-examination, the Application, the prefiled testimony of Wolf Hills and the Staff, and revised Exhibit 4 to the Application.

DISCUSSION

This is a case where the right project is proposed for the right site at the right time. As Virginia moves toward retail competition in the sale of electricity, Virginia's retail electricity suppliers will call on multiple sources of wholesale electric supply to meet demand. The Wolf Hills facility fills an important niche to meet that demand.

Virginia Code § 56-265.2 B provides:

In exercising its authority under this section, the Commission, notwithstanding the provisions of § 56-265.4, may permit the construction and operation of electrical generating facilities, which shall not be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 (§ 56-232 *et seq.*) of this title, upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give

consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 *et seq.*) of Title 56.

In reviewing the component requirements of the statute set forth above, it was established in the record that the electricity produced at the Wolf Hills facility will be sold exclusively on the wholesale market and will be subject to commodity price competition in that market. Wolf Hills' wholesale sales of electricity will be subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") pursuant to 16 U.S.C. § 824. The entire cost for the construction, maintenance, and operation of the facility will be borne by Wolf Hills, not by any regulated public utility. The Wolf Hills facility meets the first requirement in the statute that it "have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth." It was further established in the record that the Wolf Hills facility would interconnect with AEP's system and that AEP has no objection to that interconnection. Wolf Hills and AEP have agreed on an interconnection plan that would connect three of the facility's generators to one 138 kV transmission line and the facility's other two generators to another 138 kV transmission line. The Wolf Hills facility is designed to meet peak summer demand for electricity and has the capability to be rapidly dispatched to meet that demand. The Wolf Hills facility meets the second requirement in the statute that it "have no material adverse effect upon reliability of electric service provided by any such regulated public utility." Finally, it was established in the record that the Wolf Hills facility would have no material effect on the environment and that it would comply with all current federal and state environmental permitting requirements. The Wolf Hills facility meets the third requirement in the statute that it is "not otherwise contrary to the public interest." Since the facility meets the requirements of the statute, it should be exempted from the provisions of Chapter 10 of Title 56 of the Code of Virginia.

FINDINGS AND RECOMMENDATIONS

Based on the evidence received in this case, the parties' Stipulation, and for the reasons set forth above, I find that:

- (1) Wolf Hills' proposed facility is subject to the requirements of § 56-265.2 B of the Code of Virginia;
- (2) Wolf Hills' proposed facility will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth;
- (3) Wolf Hills' proposed facility will have no material adverse effect upon the reliability of electric service provided by any regulated public utility in the Commonwealth; and
- (4) Wolf Hills' proposed facility is not otherwise contrary to the public interest.

I therefore ***RECOMMEND*** that the Commission enter an order that:

- (1) ***ADOPTS*** the findings contained in this Report;
- (2) ***GRANTS*** Wolf Hills a certificate of public convenience and necessity pursuant to § 56-265.2 B of the Code of Virginia for the proposed facility; and
- (3) ***GRANTS*** Wolf Hills' proposed facility an exemption from the provisions of Chapter 10 of Title 56 of the Code of Virginia.

COMMENTS

The parties waived their right to file comments to this Report.

Respectfully submitted,

Michael D. Thomas
Hearing Examiner